

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FERRONE CLAIBORNE,

Petitioner,

v.

//

CIVIL ACTION NO. 1:12CV38
(Judge Keeley)

TERRY O'BRIEN,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On March 6, 2012, the pro se petitioner, Ferrone Claiborne ("Claiborne"), filed a petition pursuant to 28 U.S.C. § 2241. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with LR PL P 2. On May 3, 2012, the respondent, Terry O'Brien ("O'Brien"), filed a Motion to Dismiss and Response to Order to Show Cause. (Dkt. No. 9). Magistrate Judge Kaull issued a Roseboro notice to the petitioner on May 8, 2012, and Claiborne filed his response on June 29, 2012.

On June 29, 2012, Magistrate Judge Kaull issued an Opinion and Report and Recommendation ("R&R"), in which he recommended that O'Brien's motion to dismiss be granted and the petitioner's § 2241 petition be denied and dismissed. (Dkt. No. 16). The magistrate judge determined that because Claiborne's offense of conviction remains a criminal offense, Claiborne had not shown that § 2255 is an inadequate or ineffective remedy, and that therefore his § 2241 petition was improperly filed.

ORDER ADOPTING REPORT AND RECOMMENDATION

The R&R also specifically warned Claiborne that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. The parties did not file any objections.* Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 16), **GRANTS** the motion to dismiss (dkt. no. 9), **DENIES** the § 2241 petition (dkt. no. 1) and **ORDERS** that this case be **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: October 3, 2012.

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE

* The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).